

REMARKS/ARGUMENTS

In response to the Office Action of November 28, 2005, Applicants have amended the claims, which when considered with the following remarks and enclosed terminal disclaimer, is deemed to place the present application in condition for allowance. Favorable consideration of all pending claims is respectfully requested.

In the Office Action of November 28, 2005, claims 3-5 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has noted that there is no antecedent basis for the term "composition" in claims 3-5. As presently amended, claims 3-5 no longer recite "composition" but rather recite in relevant part "[a] microemulsion pre-concentrate." Antecedent basis for the term "microemulsion pre-concentrate" may be found in the claims from which claims 3-5 depend. Withdrawal of the rejection of claims 3-5 under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Claims 1, 3 and 5 have been rejected under 35 U.S.C. § 102(a) as allegedly anticipated by Woo (U.S. Patent No. 5,603,951). On page 2 of the Office Action, the Examiner has indicated that the present application is a section 371 application of international application PCT/EP95/04187, having an international filing date of October 25, 1995. The Examiner has also noted the effective filing date of Woo as April 21, 1995. 35 U.S.C. § 102(a) indicates that a person shall be entitled to a patent unless "the invention was known or used by others in this country, *or patented or described in a printed publication in this or a foreign country*, before the invention thereof by the applicant for patent" (emphasis added). Applicants respectfully submit that since U.S. Patent No. 5,603,951 did not issue in this country until February 18, 1997, which date is *after* the international filing date of the corresponding PCT application to the present 371 application, the Examiner may have meant to issue a rejection under 35 U.S.C. § 102(e).

The Examiner has even indicated on the bottom of page 2 of the office action that the effective filing date of Woo, April 21, 1995, as prior to the international filing date of the corresponding PCT application (PCT/EP95/04187) to the present application, i.e., October 25, 1995.

Applicants rely on the benefit of previously filed foreign applications to establish an effective filing date earlier than that of Woo (U.S. Patent No. 5,603,951).

35 U.S.C. § 365(b) provides the following:

(b) In accordance with the conditions and requirements of section 119(a) of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

International application PCT/EP95/04187 is therefore entitled to a right of priority based on prior GB applications: 9421613.2; 9422084.5; 9425353.1; and 9517133.6, all of which applications were filed prior to the U.S. application which matured into Woo (U.S. Patent No. 5,603,951). Thus, Applicants have antedated Woo by relying on previously filed foreign applications to establish an effective filing date earlier than the U.S. filing date of Woo.

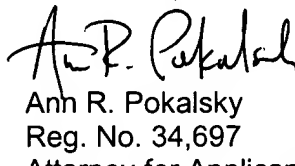
With respect to perfecting Applicants' claim to foreign priority, it is respectfully submitted that there has been no acknowledgment of a claim for foreign priority under 35 U.S.C. § 119(a) in the Office Action Summary. That is, the Examiner has not indicated that certified copies of the priority documents have been received in U.S. Serial No. 08/737,774, the parent application to the present application. Yet, Applicants' own records indicate that such certified copies have been received by the U.S. Patent and Trademark Office. See filing receipt and Notice of Allowability in U.S. Serial No. 08/737,774, submitted herewith as Exhibit A. Since certified copies of GB applications:

9421613.2; 9422084.5; 9425353.1; and 9517133.6 been received by the U.S. PTO, Applicants' priority claim under 35 U.S.C. §119 (a) has been perfected and withdrawal of the rejection of claims 1, 3 and 5 under section 102(e) is therefore respectfully requested.

Claims 1, 3 and 5 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5 of U.S. Patent No. 5,932,243 in view of Woo (U.S. Patent No. 5,903,951). In response to the double patenting rejection, a terminal disclaimer is submitted herewith, disclaiming that portion of the term of any patent issuing from the present application which would extend past the term U.S. Patent No. 5,932,243. Withdrawal of the double patenting rejection is therefore warranted.

In view of the foregoing remarks, amendments, and terminal disclaimer submitted herewith, it is firmly believed that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,


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